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Person To Contact: _____, ID No. _____
Telephone Number: _____

District:

Plan:

Trust:

Agreement:

State:

Dear _____ :

This letter responds to a letter from your authorized representative dated April 10, 2009, as well as subsequent correspondence, submitted on behalf of the District, requesting a ruling that the Trust's income is excludable from gross income under § 115 of the Internal Revenue Code. The District represents the following facts.

FACTS

The District is a public utility and municipal corporation organized under the laws of the State. It maintains the Plan to provide self-insured post-employment medical benefits to eligible retirees and their spouses and dependents. The District pays all or a portion of the costs for these benefits. The benefit costs to participants vary, depending

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on the retirement date, the eligibility of the retiree or dependent for Medicare, and the identity of the beneficiary (retiree, spouse, child, or surviving spouse or child).

The District specifically represents that there is no cash-out of any amounts contributed to the Plan and no conversion of any sick or vacation days to post-retirement medical benefits. The Plan does not permit any funding of benefits by pre-tax salary reduction, and only retirees and their spouses and dependents are eligible for plan benefits.

The District has established the Trust pursuant to the Agreement, for the exclusive purpose of funding post-employment benefits other than pensions, including medical coverage. All Trust assets are irrevocably dedicated to this purpose, which includes payment of Trust administration expenses. No Trust assets may revert to the District or the trustee before all Plan liabilities are satisfied or discharged.

The trustee of the Trust is appointed, and may be removed, by the District's board of commissioners. The trustee accepts Trust contributions and makes disbursements as directed by the District or for the reasonable costs of Trust administration. Except to the extent properly delegated to an investment manager, the trustee invests and otherwise manages Trust assets.

The District may terminate the Trust at any time. Upon termination, the trustee will continue to administer the Trust until all Plan obligations for post-employment medical benefits have been satisfied or discharged, or all funds have been paid out. If all benefit obligations have been satisfied or discharged, any Trust assets remaining shall be transferred to the District, or as the District directs, provided that no such assets will be transferred to an entity other than the State, a political subdivision of the State, or an entity the income of which is excluded from gross income under § 115.

LAW AND ANALYSIS

Section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential government function and accruing to a state or any political subdivision thereof.

In Rev. Rul. 77-261, 1977-2 C.B. 45, income from an investment fund, established under a written declaration of trust by a state, for the temporary investment of cash balances of the state and its participating political subdivisions, was excludable from gross income for federal income tax purposes under § 115(1). The ruling indicated that the statutory exclusion was intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of a corporation or other entity engaged in the operation of a public utility or the performance

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of some governmental function that accrued to either a state or municipality. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and which are within the ambit of a sovereign properly to conduct. In addition, pursuant to § 6012(a)(2) and the underlying regulations, the investment fund, being classified as a corporation that is subject to taxation under subtitle A of the Code, was required to file a federal income tax return each year.

In Rev. Rul. 90-74, 1990-2 C.B. 34, the Internal Revenue Service determined that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under § 115. In Rev. Rul. 90-74, private interests neither materially participate in the organization nor benefit more than incidentally from the organization.

The Trust was established as a separate entity to fund post-employment medical benefits for retired District employees and their spouses and dependents under the Plan. Providing such benefits to former public employees constitutes the performance of an essential governmental function within the meaning of § 115(1). See Rev. Rul. 90-75 and Rev. Rul. 77-261.

The provision of medical benefits to participating retirees and their dependents satisfies the obligation of the District under the Plan to provide those benefits; thus, the income of the Trust accrues to the benefit of the District, which is a public utility and municipal corporation of the State. No private interests participate in, or benefit from, the operation of the Trust, other than as providers of goods and services. The benefit to retired District employees is incidental to the public benefit. See Rev. Rul. 90-74.

CONCLUSION

Based solely on the facts and representations submitted by the District, we conclude that the income of the Trust is derived from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof for purposes of § 115(1). Consequently, we rule that the Trust's income is excludable from gross income under § 115(1).

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding the federal tax consequences of contributions to, or payments from, the Trust with respect to the Plan, including (but not limited to) whether such contributions are excludable from the gross

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income of District employees or former employees under § 106 and whether such payments are excludable from the gross income of District employees or former employees under § 104 or § 105.

Section 3.01(10) of Rev. Proc. 2009-3, 2009-1 I.R.B. 107, provides that the Service will not rule on whether a self-insured medical reimbursement plan satisfies the requirements of § 105(h) for the plan year. Accordingly, we express or imply no opinion regarding whether the Plan satisfies the nondiscrimination requirements of § 105(h) of the Code or § 1.105-1 of the Income Tax Regulations.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT
Assistant Chief
Exempt Organizations Branch 2
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

enclosures: copy for ' 6110 purposes